IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

ZACKARY KEGAN CRUZ,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
CITY OF BROWNFIELD POLICE DEPARTMENT, et al.,	)	
	)	
	)	
Defendants.	)	Civil Action No. 5:12-CV-123-C

ORDER

On this day the Court considered the Defendants' Motion to Dismiss, filed September 7, 2012. Plaintiff failed to file a timely response.

I.
BACKGROUND

Plaintiff brings civil rights claims alleging excessive force and state law claims based upon the same conduct. He has sued two officers of the Brownfield Police Department in their individual and official capacities and the City of Brownfield Police Department. Specifically, Plaintiff brings claims for alleged violations of his civil rights guaranteed by the Fourth and Eighth Amendments to the United States Constitution, as well as ambiguously defined "state law claims."

Plaintiff alleges that on August 6, 2011, Brownfield Police Department vehicles pursued Plaintiff and initiated a traffic stop. He further alleges that he was thrown to the ground, handcuffed, kicked, and had his head slammed into the hood of a patrol car during the arrest.

Defendants assert in their Answer that Plaintiff's lawsuit is fraudulent because any physical injuries resulted from an altercation earlier that evening between Plaintiff and another individual, which formed the basis for the police seeking to detain the Plaintiff. More specifically, Defendants assert that Plaintiff domestically assaulted a female and then fled the scene with the female in his vehicle, causing the officers to pursue after having been called to the scene. Finally, Defendants assert that Plaintiff's injuries were the result of someone intervening earlier to stop the domestic assault and were self-inflicted when Plaintiff fled into the dark at the scene of the traffic stop and ran face-first into a wooden fence while under the influence of drugs and/or alcohol.[1]

II.
STANDARD

To survive a motion to dismiss for failure to state a claim, a complaint must contain sufficient factual matter that, if accepted as true, "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp.* v. *Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* It follows that "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Id.* at 679 (quoting Fed. R. Civ. P. 8(a)(2)). While this standard does not require the complainant to make detailed factual allegations, it does demand more than a complainant's bare assertions or legal conclusions. *Id.* at 678.

[1]Although the Court has recited Defendants' version of the factual background, the Court did not rely on this version in its analysis.

III.
DISCUSSION

Defendants seek dismissal of Plaintiff's claims against Defendant Brownfield Police Department because it is not a jural entity. The Court agrees with Defendants' arguments on this issue. *See Darby v. Pasedena Police Dep't*, 939 F.2d 311, 313 (5th Cir. 1991); *Coffer v. Tarrant Co.*, 2003 WL 21999463, *2 (N.D. Tex. Aug. 22, 2003) (entity must have been granted capacity to "sue and be sued"); *see also* Fed. R. Civ. P. 17(b) (a party must have capacity to sue or be sued). Thus, Plaintiff's claims against Defendant Brownfield Police Department are **DISMISSED** WITH PREJUDICE.

Defendants also seek dismissal of Plaintiff's "official capacity" claims against the Defendant officers because Plaintiff has failed to allege or identify a custom or policy by the City of Brownfield which proximately caused the alleged constitutional deprivation. *See Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (quoting *Monell v. New York City Dep't of Soc. Servs.*, 436 U.S. 658, 690 n.55 (1978)). A review of Plaintiff's Complaint reveals that he failed to mention or allege any official policy or custom known to a policymaker which was the moving force behind any alleged constitutional violations. *See Pineda v. City of Houston*, 291 F.3d 325, 328 (5th Cir. 2002). Thus, Plaintiff's official capacity claims are **DISMISSED** WITHOUT PREJUDICE for failing to state a claim as alleged.

Likewise, Defendants seek dismissal of Plaintiff's Eighth Amendment claims. As properly argued by Defendants, Plaintiff only makes allegations for excessive use of force during an arrest. The Fourth Amendment is the proper vehicle for bringing claims of excessive use of force in such instances. *See Graham v. Conner*, 490 U.S. 386, 398 (1989) (quoting *Ingraham v.*

Wright, 430 U.S. 651, 671 n.40 (1997) ("Eighth Amendment applies 'only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions.'")). Thus, Plaintiff's Eighth Amendment claims for excessive use of force are **DISMISSED** WITH PREJUDICE for failing to state a claim.

Finally, Defendants seek dismissal of Plaintiff's state law claims. As argued by Defendants, Plaintiff never states exactly what state law claims he is asserting other than to state that supplemental jurisdiction exists "for related common law and statutory claims under the laws of the State of Texas." However, because Plaintiff has failed to articulate what the state law claims may be, the Court is not able to grant or deny Defendants' request for dismissal of such claims. Rather, Plaintiff has failed to meet the notice pleading standard articulated under Federal Rule of Civil Procedure 8(a). A *very liberal* construction of Plaintiff's allegations might leave the impression that Plaintiff is attempting to assert state law claims for assault and battery. To the extent such claims arise out of an alleged intentional tort, as aptly argued by Defendants, the claims would be barred by the Texas Tort Claims Act. *See* Tex. Civ. Prac. & Rem. Code § 101.057 (Act does not apply to waive immunity for intentional torts). At any rate, Plaintiff's statements relating to jurisdiction for his state law claims fail to meet the pleading standards under Rule 8(a). Thus, any state law claims barred by the Texas Tort Claims Act are **DISMISSED** WITH PREJUDICE and any state law claims not arising out of intentional acts are **DISMISSED** WITHOUT PREJUDICE because Plaintiff has failed to articulate the claims.

IV.
CONCLUSION

The Court, having considered the Defendants' Motion to Dismiss, is of the opinion that the Motion should be **GRANTED IN PART** as stated above. Plaintiff's claims against the Defendant Officers in their individual capacities for alleged violations of the Fourth Amendment remain pending.

SO ORDERED.

Dated October 3, 2012.

SAM R. CUMMINGS
UNITED STATES DISTRICT JUDGE